

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LORA ANN BRAND,
 Plaintiff(s),
 v.
 KILOLO KIJAKAZI,
 Defendant(s).

Case No. 2:20-cv-02219-NJK

ORDER

This case involves judicial review of administrative action by the Commissioner of Social Security (“Commissioner”) denying Plaintiff’s application for disability insurance benefits pursuant to Titles II and XVI of the Social Security Act. Currently before the Court is Plaintiff’s Motion for Reversal and/or Remand. Docket No. 22. The Commissioner filed a response in opposition and a cross-motion to affirm. Docket Nos. 23-24. Plaintiff filed a reply. Docket No. 25.¹

One of the issues before the Court is whether remand is required in light of constitutional concerns regarding the tenure of former Commissioner Andrew Saul. The parties’ briefing has not directly addressed the question of Plaintiff’s standing to raise this argument, which is a jurisdictional issue that the Court has a duty to examine. *E.g., United States v. Hays*, 515 U.S. 737, 742 (1995). Moreover, it appears that there is a split of authority on standing in the context of the separation-of-powers argument now being presented. *See, e.g., Tristan M. v. Kijakazi*, 2021 WL 4993086, at *2 (D. Minn. Oct. 27, 2021) (collecting cases on split of authority).

¹ The parties consented to resolution of this matter by the undersigned magistrate judge. *See* Docket No. 3; *see also Gen. Order* 2019-08.

1 Accordingly, the Court **ORDERS** the parties to file supplemental briefs specifically
2 addressing Plaintiff's standing. These briefs must be filed no later than November 16, 2021, and
3 must be no longer than 20 pages in length.²

4 IT IS SO ORDERED.

5 Dated: November 2, 2021

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9 Nancy J. Koppe
10 United States Magistrate Judge
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27 ² This is a rapidly evolving area of the law. The Court expects counsel to thoroughly
28 research their positions and to cite supportive case law whenever possible, even if that case law is
out-of-circuit, unpublished, and/or at the district court level.